

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-752376-D1
AND ALL OTHER SEAMAN DOCUMENTS

Issued to: Lorimer P. Erdaide

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1513

Lorimer P. Erdaide

This appeal has been taken in accordance with Title 46 United States Code 239g and Title 46 Code of Federal Regulations 137.30-1.

By order dated 27 January 1965, an Examiner of the United States Coast Guard at New York, New York revoked Appellant's seaman documents upon finding him guilty of the charge of "conviction for a narcotic drug law violation." The three specifications found proved allege that, on 28 January 1958, 7 September 1955 and 12 May 1955, Appellant was convicted by the Court of Special Sessions of the City of New York, County of New York, a court of record, for unlawful possession of a narcotic drug.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced documentary evidence of three convictions and rested his case. These documents support the allegations as to convictions on 28 January 1958 and 7 September 1955 but not 12 May 1955. The evidence indicates that the conviction alleged on the latter date was also on 7 September 1955 and was for unlawful possession of a hypodermic needle and other equipment used to inject narcotic drugs rather than for unlawful possession of a narcotic drug as alleged in the specification. Therefore, the conclusion that this specification was proved is set aside and the specification is dismissed.

Appellant testified that he had been an addict but is cured and has had no contact with narcotics since 1958. Extensive evidence of rehabilitation was introduced to corroborate this.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specifications had been proved. The Examiner then entered an order revoking all documents issued to Appellant. A temporary document was authorized by the Commandant and issued to Appellant pending the outcome of this appeal.

OPINION

The issues raised on appeal have been thoroughly discussed by

the Examiner in his decision since the identical material was submitted to the Examiner in support of a motion to dismiss the charge and specifications.

On the bases of the regulations and prior decisions of the Commandant, the Examiner concluded that he was required to enter an order of revocation after proof of a narcotics conviction for other than use of or addiction to narcotics, and that the Court of Special Sessions of the City of New York, County of New York, is a court record for the purpose of these proceedings although the law of New York State specified it was a court not of record.

For the purpose of uniformity in these proceedings under 46 U.S. Code 239b, the criterion used to determine if a particular court is a court of record is whether or not it possesses the primary characteristics of a court of record according to the common law. See 46 CFR 137.03-15. By analogy, the propriety of this test is upheld by Adams v. United States, 299 F. 2d 327 (9th Cir. 1962) which decided that it is not within the power of a state legislature to provide procedures for obliterating a valid conviction so as to prevent its use in administering a federal statute intended by Congress to be applied uniformly relative to the use of convictions obtained in state courts. See also Commandant's Appeal Decision No. 1223. This reasoning is equally true with respect to the meaning of "Court of record" in these proceedings since, in some cases, there is a considerable variance in the laws of the statutes as to the caliber of the tribunals which are designated as courts of record.

The court in question is considered to be a court of record because it fully meets the criterion applied. (It is interesting to note, as pointed out by the Examiner, that the Court of Special Sessions of the City of New York was superseded by the Criminal Court of the City of New York, on 1 September 1962, and the successor court is a court of record according to state law.)

The remaining question is whether or not there is conclusive evidence of rehabilitation showing that Appellant has severed all connections with narcotics so that it would serve no purpose, in the interest of safety at sea, to prevent Appellant from continuing his livelihood at sea. See Commandant's Appeal Decision No. 1382. In view of the abundant evidence of rehabilitation during the past seven years, the question requires an affirmative answer. Hence, the revocation of Appellant's documents will be set aside.

At the time of Appellant's last conviction on 28 January 1958, he was sentenced to one year imprisonment, but suspension of the sentence was granted on the condition that Appellant go to the United States Public Health Service Hospital at Lexington, Kentucky for treatment as a narcotic addict. Appellant entered the hospital and, on 5 June 1958, was discharged after completion of the hospital treatment for addiction. Appellant testified that he had become "hooked" on heroin after first using it out of curiosity; and he used it off and on between 1955 and 1958.

Appellant returned to his home in Brooklyn where he has lived for more than 20 years. Appellant became 38 years old in June 1965. He was married in 1954 and has four children living with himself and his mother. Appellant is the sole support of his children and mother. His wife, an addict, left in 1958 shortly after Appellant returned from Lexington and he has not seen her since

then. Appellant is highly thought of in the community as attested to by a neighbor for 20 years, the assistant pastor of the church attended regularly by Appellant's children, and the administrator of the Brooklyn hospital where his youngest son has been receiving extensive treatment since 1960.

Appellant served as a porter on the INDEPENDENCE from 21 July 1958 to 2 September 1958. Starting on 2 October 1958, he has served on the CONSTITUTION almost without interruption to the present time. Operating out of New York City, Appellant has made approximately 100 voyages of about three weeks' duration each during the past seven years. The exact dates of these trips show that Appellant has been employed about 85 per cent of the time including Saturdays, Sundays and holidays. Although the officers on the CONSTITUTION knew of Appellant's prior association with narcotics, he has been steadily promoted from Tourist Class Elevator Operator to First Class Waiter. Appellant earned these promotions by his hard work and conduct which has been above reproach in all respects according to the testimony of the Chief Purser, Staff Purser and Headwaiter on the CONSTITUTION. There is absolutely no evidence in the record on which to base even a suspicion that Appellant has had any contact with narcotics during these past seven years of faithful service.

Appellant has compiled an enviable record since leaving Lexington in June 1958. His life at sea and in the community where he lives are clear evidence of this. There is every indication that it will be consistent with the promotion of safety at sea to permit Appellant to continue his present livelihood.

CONCLUSION

The findings and conclusions of the Examiner that the charge and two specifications have been proved are affirmed.

ORDER

The order of the Examiner dated at New York, New York, on 27 January 1965, is VACATED.

W. D. Shields
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D.C., this 29th day of July 1965.

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